

Minutes of a Regular Meeting

Approved 6/10/04

Town of Los Altos Hills PLANNING COMMISSION

Thursday, May 13, 2004, 7:00 p.m.
Council Chambers, 26379 Fremont Road
cc: Cassettes (1) #7-04

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

The Planning Commission regular meeting was called to order at 7:00 p.m. in the Council Chambers at Town Hall.

Present: Chairman Clow, Commissioners Mordo, Vitu, Cottrell & Kerns

Staff: Debbie Pedro, Associate Planner; Dave Warner, Assistant City Attorney; Lani Smith, Planning Secretary

2. PRESENTATIONS FROM THE FLOOR-none

3. PUBLIC HEARINGS

- 3.1 LANDS OF PINWOOD SCHOOL, 26800 Fremont Road (85-03-ZP-SD-CUP);
A request to modify a Site Development Permit Condition to dedicate a 17.5 foot wide pathway easement on the southwest side of the property. (Staff-Debbie Pedro)

Staff introduced this item by providing a brief background of the project and the approval of the Conditional Use Permit amendment and a Site Development Permit for the installation of a synthetic turf soccer field at Pinewood School. Condition of approval #10 required the dedication of a 17.5' wide pathway easement along the southwest edge of the school. This off-road path was established a number of years ago and is widely used by students as well as the general public to access the school and provides a connection to the adjoining neighborhoods between Ortega Drive and Ascension Drive. However, the Palo Alto Unified School District indicated that they did not wish to grant a pathway easement to the Town as required as they did not wish to be bound by any easement agreement beyond the term of the Pinewood School lease. As an alternative to the pathway easement dedication, Pinewood is proposing a License Agreement that would allow public access to the path. The Agreement would essentially give the Town a contractual right for the use of the path as long as Pinewood is a tenant on the property. According to the Agreement, when Pinewood terminates their lease with the School District, the License for public use of the path will expire. The Pathway Committee reviewed the permit modification request at their April 26th meeting and agreed to accept a License Agreement from Pinewood School subject to the following: 1) The License Agreement has been reviewed and found acceptable by the City Attorney; and 2) To confirm that Pinewood School has the right to create such a License Agreement, given they are not the property owners. This agreement has been reviewed by the City Attorney and was found acceptable. However, it is

unclear whether the school has the authority to provide such a license without prior approval by the landlord (Palo Alto Unified School District). Pinewood was asked to provide the Town with something in writing from the School District indicating the issuance of the license would not be a violation of their lease. This afternoon, Pinewood was able to obtain a letter from the School District indicating the issuance of the license would not breach the terms of their lease agreement. A copy of the letter was provided to the Commissioners. This means that Pinewood is able to meet the conditions of the Pathway Committee and the Committee would recommend approval of the propose License Agreement.

Commissioner Mordo asked what would happen when the lease expires and/or terminated and would Pinewood get to keep the synthetic turf field?

David Warner, Assistant City Attorney responded stating you have an applicant who came to the Commission with the consent of the owner of the property for the right to put the field in. The condition originally was the granting of an easement which would have been permanent. Instead, because Pinewood cannot secure the easement, they have only the ability to offer a license across the property which, at least while they will be in this location, it will serve the purpose which is public access. When the lease expires, the field would have a right to remain as long as the conditions of this permit are in place (access continues). The field would still be conditioned on access of the pathway. The License Agreement is only with Pinewood School. If Pinewood School were to leave and someone else was not willing to enter into a License Agreement then the condition would fail and the Town would have to pursue it in some degree.

Chairman Clow asked, assuming the lease is renewed, will the license renew along with it? Mr. Warner stated, according to the recent letter from the School District, they refer to the Lease Agreement between Creative Center and the School District. They do not refer to renewals of that Lease Agreement.

Commissioner Vitu questioned a prescriptive easement since this has been used as a pathway.

Mr. Warner stated you cannot have a prescriptive easement over public property. He further discussed nexus which is an issue which is litigated all over the country and different courts have different interpretations. It use to be very easy for Towns to make the argument that all sorts of things had nexus. The Supreme Court started narrowing that interpretation. The School District is making an argument that an easement over this pathway has nothing to do with the new Astroturf field. To counter this thought, he noted that the staff has made significant findings that indeed the use of that pathway is necessary for that field, and has been necessary for a number of years. The idea and understanding is that the field is being changed to Astroturf so it can get even more use which means there will be even more use of that pathway which is a definite connector. It makes an argument that nexus prevails.

Commissioner Cottrell stated that the pathway has been in use for more than 25 years which runs along a creek bank, and a utility easement noting nothing would ever happen to the pathway.

Ms. Pedro stated there is also a storm drain easement, plus a public utility easement and the restriction of no construction within 25 feet from top of creek bank.

OPENED PUBLIC HEARING

Scott Riches, President of Pinewood School, for clarification, noted the staff report indicates a possible increase in the use of the field. He did not expect any increase usage. Also, as far as the pathway being necessary to access the field, right now there is an access gate there. At a last City Council meeting in the fall, Pinewood was authorized to keep their gates locked for security reasons. Even though the pathway is there, there is no access through the gates to get to the fields. As far as the lease question, it is a 20 year lease. After the first nine years of the 20 year lease both the School District and Pinewood come together to re-negotiate the rent. If they can agree on the rent, the lease continues to run. He felt the license would be good for the term of the lease. He complimented staff for a great staff report summary as to what has happened. They have tried to cooperate with the Town, understanding the Town's need for the pathway. Their only alternative was to propose a Lease Agreement.

Sandy Humphries, 26238 Fremont Road, stated using the Astroturf field in the winter would constitute an increase in use. Currently, they cannot use the existing field in the winter (rainy season).

Nancy Ewald, 26131 Altadena Drive, resident and Pathway Committee member, encouraged the Planning Commission to support this path to remain open. It is her favorite path and there are so many people who have used it over the years. She asked if there was any type of setback from the creek and does the property of the School District go all the way to the middle of the creek. Staff stating the property line goes approximately to the center of the creek.

CLOSED PUBLIC HEARING

Commissioner Vitu voiced support for the project noting Pinewood has done everything they can do and the pathway will continue to stay open with the License Agreement arrangement. This will benefit Pinewood School as well as the Town. Commissioner Cottrell concurred. He felt Pinewood School was an asset in Los Altos Hills and the License Agreement is a good compromise. Commissioners Kerns, Mordo and Clow also concurred.

David Warner, Assistant City Attorney, suggested adding wording to condition #10, The applicants shall "*provide and maintain in place for the life of this permit*" a License Agreement...

MOTION SECONDED AND PASSED: Motion by Commissioner Cottrell and seconded by Commissioner Vitu to approve the applicant's request to amend the Site Development Permit and adopt the License Agreement, Pinewood Private School, 26800 Fremont Road, with a change to condition #10, The applicants shall "*provide and maintain in place for the life of this permit*" a License Agreement...

AYES: Chairman Clow, Commissioners Mordo, Vitu, Cottrell & Kerns
NOES: None

This approval is subject to a 23 day appeal period.

4. OLD BUSINESS

4.1 Report from subcommittees-none

5. NEW BUSINESS-none

6. REPORT FROM THE CITY COUNCIL MEETING

6.1 Planning Commission Representative for May 6th-Commissioner Cottrell, reported on the following: Adobe Creek proposal accepted by the Santa Clara Water District; new Town Hall status report; and a presentation asking the Council to take some action regarding the Bullis School site which resulted in a special meeting held May 12, 2004.

6.2 Planning Commission Representative for May 20th-Commissioner Kerns

6.3 Planning Commission Representative for June 2nd-Commissioner Mordo

6.4 Planning Commission Representative for June 16th-Commissioner Vitu

7. APPROVAL OF MINUTES

7.1 Approval of April 8, 2004 minutes

PASSES BY CONSENSUS: To approve the April 8, 2004 minutes with a correction to 3.1,
~~AYES: Commissioner Kerns, "ABSTAIN: Commissioner Kerns".~~

8. REPORT FROM FAST TRACK MEETING-APRIL 6 & 20 AND MAY 11, 2004

8.1 LANDS OF BUXTON, 27850 Via Feliz (250-03-ZP-SD); A request for a Site Development Permit for a 6,489 square foot new residence (maximum height 24 feet) and remodel. Approved with conditions.

8.2 LANDS OF LISBONNE, 26110 Eucalyptus Lane (26-04-ZP-SD); A request for a Site Development Permit for a 1,298 square foot addition (maximum height 26 feet). Approved with conditions.

8.3 LANDS OF CHEN, 27460 Altamont Road (239-03-ZP-SD-GD); A request for a Site Development Permit for a 1,586 square foot addition (maximum vertical height 25'6"). Approved with conditions.

9. REPORT FROM SITE DEVELOPMENT MEETING-APRIL 13 & 20, MAY 4, 2004

9.1 LANDS OF BOAL, 13860 Robleda Road (39-04-ZP-SD); A request for a Site Development Permit for a landscape screening plan. Approved with conditions.

9.2 LANDS OF ASKARI, 27836 Elena Road (22-04-ZP-SD); A request for a Site Development Permit for a landscape screening plan and hardscape improvements. Approved with conditions.

- 9.3 LANDS OF DE SILVA, 13160 Avila Court (34-03-ZP-SD-GD); A request for a Site Development Permit for a 820 square foot swimming pool. Approved with conditions.
- 9.4 LANDS OF MARCUS, 27900 Black Mountain Road (54-04-ZP-SD-VAR); A request for a Site Development Permit for a 42 square foot addition (maximum height 13 feet), and a minor variance to rebuild a 48 square foot equipment room (maximum height 11.5 feet) in the west (side) setback. Approved with conditions.

10. ADJOURNMENT

The meeting was adjourned by consensus at 7:28 p.m.

Respectfully submitted,

Lani Smith
Planning Secretary